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CHAPTER 1

WRONGFUL DEATH ACTIONS PUNISH WRONGDOERS AND COMPENSATE THE FAMILY

A. What is a Wrongful Death Action?

Wrongful Death actions are specialized civil lawsuits, brought by the family of the loved-one who died, due to the negligence or wrong doing of a third-party.

The right to file a claim for wrongful death was specifically created under the Georgia Wrongful Death Act, O.C.G.A. § 51-4-1. The law permits Georgia families to “...recover for the full value of the life of the decedent¹ as shown by the evidence.”

In 1932 the Georgia Supreme Court explained the purpose of the law was to:

Strike at the evil of the negligent destruction of human life, by imposing liability upon those who are responsible therefore. It is not beyond the power of the

¹ The person who died is often described as the “decedent.”

Legislature to attempt to preserve human life by making homicide committed by ordinary or simple negligence expensive...[the law] ...may enact a penalty in addition to such loss ... it may impose an extraordinary liability .. **not only upon** those at fault, but upon those who, although not directly culpable, are nevertheless able in the management of their affairs to guard substantially against the evil to be prevented.

Western & C. R. Co. v. Michael, 175 Ga. 1 (1932).

Georgia law does not limit wrongful death actions to any specific set of facts; rather, claims may arise in any situation that involves the sudden and wrongful loss of one's life due to the negligence of a third party. The most common scenarios include: (1) motor vehicle collisions, where a truck/car/motorcycle runs into either another vehicle, or with someone walking, jogging or riding a bicycle; (2) an accident while the loved one was at work; (3) medical malpractice, regardless if it occurs in a hospital, clinic, office or pharmacy; (4) as a result of criminal activity; and (5) during recreational sports including all water activities.

B. Are Wrongful Death Lawsuits Simply About the Money?

While this is a reasonable question, the answer is a resounding no. It's not *just* about the money.

i. Money = Justice.

A money judgment provides some justice, some dignity for the family, even if the justice obtained is limited and flawed.

What I mean by the term "justice is limited and flawed" is that money can never return the loved one and no amount of money

can ever truly compensate for the loss. Rather, obtaining money from the defendant simply makes the world seem a little bit more balanced. It gives the family recognition of the value of the life lost. Nothing is worse than seeing the defendant returning to their “normal life,” while the grieving family’s world is turned upside. As such, the Court’s order that the wrongdoer must pay helps restore balance to the universe—even if it’s just a little.

The Bible talks about justice being an eye for an eye, a tooth for a tooth. In our culture, money is the currency by which we measure ourselves. Therefore, in the modern civil justice system, taking money from the wrongdoer is the punishment that society inflicts.

ii. Money Eases Financial Strains.

While money could **never** make the family whole, it can ease the financial strain.

The most obvious when the person killed was a parent to young children.

If the decedent was working outside the home, then the family has suffered a major economic loss. Assuming the parent earned an average \$30,000 per year, and most likely would have worked for another twenty (20) more years, simple math shows that the family lost income over \$600,000.

If the decedent was a stay-at-home parent, then the family equally suffered a major economic loss. From a pure economic perspective, what does it cost to hire the “very best” caregiver, the “very best” teacher, the “very best” organizer, the “very best” psychologist, and the “very best” chef? I use the term ‘very best’ on purpose. After all, a child’s parent is the person that provides the very best for that child. You can see this if you have ever

taken care of of young children. I recall taking care of my niece and nephew, when they were young and they would always say “that’s not how Dad does it”, or “that’s not how Mom does it”. To my niece and nephew, just as to all children, their parent’s way of doing “it” was the absolute best way.

The same logic applies in all situations. It does not matter if the person was 8 months or 80 years old. The person that died provided the “very best” love for their family and friends. In each situation, the loved-one provided something extremely important – and the world has suffered an important loss due to the negligence of the wrongdoer.

In other words, money helps the survivors heal. It could pay for a caregiver, for family counseling, or a babysitter. It could pay for the family to take time off from work and school or even pay for a scholarship in the name of a loved-one.²

The recovery also helps the family to pay for those unexpected costs that they are forced to incur. This includes burial cost and end-of-life medical expenses. It is a sad truth, but many times, families are forced to use their savings to pay these expenses just at the point in time when it’s needed the most to help the living recover.

iii. A money judgment encourages safer behavior.

The goal, as explained by the Georgia Supreme Court in 1932, is to encourage safety through monetary penalties.

To understand why these statutes encourage safety, pause and consider the facts and circumstances that lead to the loved one’s

² It has been said that there are really two deaths. The first, when the body dies, and the second, when the loved-one’s name has been forgotten. One family that tragically lost a child set up a foundation to help children. In this way, the child’s name lives on.

unexpected death. In each and every situation the death was caused by someone acting carelessly, and many times, recklessly.

This is not to say that the wrongdoer intentionally killed the loved one. Rather, the wrongdoer—at a specific moment in time and space—was acting dangerously, carelessly, and recklessly.

Think about it. A driver kills someone while speeding or while drunk. A doctor misdiagnoses a patient because he fails to read the test that was ordered. A tire store fails to tighten the bolts on all four new tires. In all of these situations, the wrongdoer did not intend to hurt anyone. However, we all know that driving while drunk slows the reaction time, resulting in more collisions. Similarly, we know that all medical tests must be interpreted, and that if a tire is not properly secured, eventually, it can cause a collision.

Thus, a money judgment encourages individuals and companies to act in a safer manner to create safer products, to hire more responsible employees, and to closely supervise them. An individual who goes out drinking with friends will plan, in advance, of a safe way to get home. Employers hire drivers who have a safe driving record, and have strict rules about the use of mobile telephones while driving. Employers also are setting forth goals and objectives for employees so that the employees will not speed. Manufacturers of automobiles and tires are striving to put safety first. With respect to retailers and service stations, they are ensuring that the repairs made are done safely.

Hospitals and doctors are implementing safer policies and procedures. There are well published statistics that show 98,000 patients per year die due to simple medical errors. Many of these mistakes are easy to correct. For example, as a low tech method of avoiding operations on the wrong body-part, doctors are

literally drawing on the patient's body, i.e. "yes, "on this knee to be operated on, and "no" on the other. A high tech example includes the use of barcodes to avoid administering the wrong medication. Even implementation of a simple hand washing program has been found to decrease the spread of infection in hospitals. As such, good hospitals are no longer focusing on money; rather, they are focusing upon protecting patient's safety and dignity.

The only way to hold the person at fault for the death of a loved one is to take what is most precious to them – their money. The wrongdoer can be further affected for a judgment against them that can impact their ability to get a job. This is most strongly observed in the healthcare area, where nurses can lose employment, and sometimes, in the cases of doctors and nurses, they can lose their medical license.

C. What is the Difference between a Wrongful Death Suit and a Charge of Involuntary Manslaughter?

There are two different types of law, criminal law and civil law. The charge of involuntary manslaughter or murder is a criminal action. The claim for wrongful death is a civil action.

Criminal actions enforce public rights and duties. These suits are brought by the police and the district attorney, collectively called the State, against individuals for wrongdoing, e.g. murder, manslaughter, or rape. Criminal defendants, if found guilty, are sent to jail.

Civil actions enforce special rights and duties between the parties. Generally, these suits are between private parties. These include claims such as breach of contract cases and claims for personal injury. Civil defendants, if found liable, must pay money for the damages caused by them.

Perhaps the best example of how the two systems work, and the importance of the civil justice system can be seen in the case of OJ Simpson—back in 1994.³

OJ Simpson was a professional football Hall of Famer. Everyone, even non-football fans knew his name. Even after retiring from football, OJ was famous as a spokesperson, broadcaster and actor.

In 1994, OJ's former wife and Ronald Goldman were found dead near OJ's home. The police accused OJ of murder. While OJ was supposed to have surrendered, he led police (and the media) on a low speed chase in southern California while driving a white SUV.

The case was big news. Every day, thousands watched the State of California prosecute OJ Simpson for murder. One particular compelling piece of the State's evidence against OJ was a bloody glove with DNA from the victims found at the Simpson house. However, the glove was too small for OJ's hand. OJ's criminal defense team developed the powerful rhetoric "if it [the glove] doesn't fit, you must acquit." That was exactly what happened; OJ Simpson was found not guilty.

The families of the victims were outraged.⁴ Then, the families decided to fight back.

The families hired wrongful death attorneys to file suit. Now, the outcome was extremely different. OJ was held responsible

3 More recently the death of Michael Jackson also demonstrates the difference. Like the OJ trial, there was a criminal trial followed by a civil trial. In the criminal case, the State of California charged Dr. Conrad Murray for involuntary manslaughter, for wrongfully administering surgical anesthetic to Michael Jackson for the purposes of putting Michael to sleep each night. A guilty verdict was rendered and Dr. Murray received 4 years of jail time. In the civil case, the family of Michael Jackson sued AEG Live the concert promoter. The family argued the concert promoter actually hired Dr. Murray and told Dr. Murray to give the anesthetic, and thus, concert promoter should be held responsible for the wrongful conduct of Dr. Murray.

4 The country was also outraged and the case sparked discussions of race and prejudice in America.

for the deaths and a \$33.5 million judgment was entered against OJ.

What made the difference? Why OJ Simpson was found not guilty⁵ in the criminal matter, but responsible under the civil justice system? There are a number of reasons.

First, in the civil action, OJ was cross-examined. Cross examination is one of the most powerful weapons to expose the truth. In criminal matters, the Fifth Amendment to the US Constitution protects against self-incrimination. Yet, in private disputes, the civil defendant can be compelled to testify.

Second, there the burden of proof in civil cases is less harsh than criminal cases. In criminal actions, the required proof is “beyond a reasonable doubt”, meaning that a juror must feel extremely convinced of the defendant’s wrongdoing. In civil actions, the burden is less, the required proof is by “preponderance of the evidence,” meaning the standard of proof is merely “more likely than not” that the defendant is responsible.

Finally, the families did not get to select their district attorneys. They were simply assigned by the state. While certain they wanted to win, those attorneys salary was still paid, win, lose or draw.

Yet, in wrongful death actions or personal injury actions, the families select their own attorneys. The civil attorneys put everything they have into an important wrongful death case. When I use the term “everything” that is exactly what I mean. Almost all wrongful death cases are contingency fee cases; this means that, in contrast to the hourly pay that the defense makes

⁵ It is noteworthy to observe that “not guilty” is not the same as innocent. Rather, the jury decision in the criminal matter simply means that the State of California failed to carry its burden to convict Mr. Simpson.

(usually \$200–\$500 per hour) the plaintiff's do not get paid unless there is a recovery. Likewise, the attorney must advance all expert fees and trial expenses, which can easily exceed \$100,000. If the case is complex, an attorney will often associate additional counsel. In other words, for the plaintiff's attorney, everything is riding on the case, just like for the family. Who do you think will fight harder?

D. Some Concluding Thoughts

The sad truth is that most of the time, the wrongdoer will never be criminally prosecuted. The criminal system is simply not set up to address these types of wrongdoing. If there is any prosecution, the punishment is usually small, whereby the defendant ends up serving short or no jail time. Similarly, the criminal system usually does not prosecute companies or organizations.

Wrongful death actions are serious lawsuits. They are expensive in every way; time, money, psychologically, emotionally, and spiritually. It's hard on the family and on the attorneys. For me, your author, it has been my greatest honor to devote my life representing families who have the courage to fight back and demand justice.